IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 81 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

RAJESH P RAJYAGURU

Appearance:

1. Special Civil Application No. 81 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/07/2001

ORAL JUDGEMENT

The present petition is filed by Gujarat Water Supply and Sewerage Board challenging the award passed by the Labour Court, Amreli, in Reference Case No.309 of 1998 (Amreli) (new) which was Reference Case No.790 of

1993 (Bhavnagar) (old) dated 16.3.2000 by which the learned Labour Judge was pleased to hold that the termination of the respondent-workman was illegal, unjust and in violation of the principles of natural justice and therefore the same is quashed. The learned Judge was pleased to order the reinstatement of the respondent-workman on his original post with continuity of service with 15% back wages and also cost of Rs.251. Mr Munshaw submitted that in the award the Labour Court has recorded in para 7 that the respondent-workman has deposed at exh.15. In the earlier part it is deposed that on 30.6.1992 he was removed from the service and that removal was by an oral order, that he had worked continuously for one year. In the latter part he deposed which is recorded in the award that the respondent-workman was not appointed by any appointment order but was appointed by an oral order. It is further stated that, "It is true that I myself had stopped coming to the institution". Mr Munshaw submitted that on the basis of these two contradictory statements, which are recorded by the learned Judge, the evidence of the respondent-workman ought to have been discarded by the learned Judge and no reinstatement ought to have been awarded or for that reason no relief should have been granted to the respondent-workman. Mr Munshaw also submitted that the deponent at one stage has stated that he had not tried to find out any alternative employment and in the second breath he has stated that he has tried to get alternative employment but he did not get it. Mr Munshaw submitted that the respondent-workman is not a reliable witness at all and in view of these two instances, recorded by the learned Judge himself, the witness ought to have been branded as "thoroughly unreliable" and no relief ought to have been granted.

2 On perusal of para 7 the Court felt that there cannot be a contradiction of such nature because, when in the first part the deponent has stated in so many words that he was removed by an oral order and in the second part he is reported to have stated that he has stopped coming to the institution on his own. Therefore, the first query was `as to whether any typographical error has crept in this typed copy, which is produced on record.' In response to this, Mr Munshaw submitted a xerox copy of the certified copy of the award for the perusal of the Court and in that also the sentence reads the same i.e. "I myself had stopped coming to the institution". Still the Court did not feel convinced of the fact that there can be a contradiction of such nature. The learned advocate for the petitioner ought to have produced before the Court the deposition of the

workman, whom he wanted to be branded as a "thoroughly unreliable witness."

3 Mr P.H. Pathak, learned advocate for the respondent-workman produced a copy of the deposition of the workman wherein it is clearly stated, "it is not true that I had stopped coming to the institution of my own". It is further required to be noted that "record and proceedings" was called for by the Court and though the same was available, the learned advocate for the petitioner did not take trouble to verify about the said contradiction, more particularly when on the basis of that contradiction he was basing his entire case.

4 The matter involves disputed questions of fact inasmuch as the Labour Court has come to the conclusion that the workman was wrongly removed by an oral order and that the said order was illegal, unjust and in violation of the principles of natural justice. Therefore, this Court does not find any substance in the matter to interfere with under Article 226/227 of the Constitution of India. The same is therefore rejected.

(Ravi R Tripathi, J.)
(mohd)